

REMARKS

This paper is responsive to an Office Action mailed May 14, 2007. Prior to this response, claims 1-36 were pending. After amending claims 1, 2, 4, 7-10, 14-19, 21, 25-28, and 35, claims 1-36 remain pending.

In Section 1 of the Office Action, objections are made to the Abstract. In response, the Abstract has been amended.

In Section 2 of the Office Action, objections are made to claims 4, 7, 8, 10, 14-17 and 21. In response, the claims have been amended as suggested.

In Section 3 of the Office Action, claims 2-8, 10-16, 19-25, and 28-35 have been rejected under 35 U.S.C. 112, second paragraph, as indefinite. In response, the claims have been amended to address the antecedent basis issues raised in the Office Action.

Claim 1-36 have been rejected under 35 U.S.C. 112, second paragraph, for omitting essential elements. The Office Action states that the omitted element is: timing the next minimum service interval in response to receiving the ACK for the retransmitted first frame, as shown in Fig. 5.

In response, the Applicant respectfully submits that no essential elements have been omitted from independent claims 1, 9, 18, and 27. As recited in these independent claims, the next minimum service interval is timed in response to the retransmitted first frame. Support for this statement can be found in the specification at page 6, lines 13-22 (Fig. 2), page 12, lines 3-12 (Fig. 5), and page 13, lines 23-26 (Fig. 6).

Further, Step 510 of Fig. 5 states, "Timing Minimum Service Interval". Step 510 does not state that the minimum service interval is times in response to receiving an acknowledgement for the retransmitted signal. As noted on page 12, lines 19-24:

In some aspects a further step, Step 509 receives an acknowledgement responsive to the retransmitted first frame. Then, using the retransmitted first frame as the next minimum service interval timing reference in Step 510 includes *using the retransmitted first frame as a timing reference* (emphasis added) in response to receiving the retransmitted first frame acknowledgement.

Since essential elements have not been omitted from independent claims 1, 9, 18, 27, and 36, the Applicant requests that the rejection of claims 1-36 be withdrawn.

In Section 5 of the Office Action, claims 1, 9, 17, 18, 26, 27, and 36 have been rejected under 35 U.S.C. 103(a) as unpatentable with respect to admitted prior art, in view of Sherman (US 6,831,912). The Office Action acknowledges that the admitted prior art fails to disclose receiving an acknowledgement, and retransmitting the first frame in response to receiving the acknowledgement. The Office Action states that Sherman discloses the retransmission of a message in response to receiving an acknowledgement that packets were missed in an initial transmission, and that it would have been obvious to incorporate these elements of Sherman into the admitted prior art "...to assure all

information is transmitted from source to destination." This rejection is traversed as follows.

An invention is unpatentable if the differences between it and the prior art would have been obvious at the time of the invention. As stated in MPEP § 2143, there are three requirements to establish a *prima facie* case of obviousness.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaack* 947 F.2d 488, 20 USPQ2d, 1438 (Fed. Cir. 1991).

In his description of Fig. 2, Sherman discloses a process of sending a data message (84) from an aircraft server to a ground station client, and sending an acknowledgement (86) from the client to the server. The acknowledgment specifies the particular packets that were missed in the previous data message 86 (col. 12, ln. 29-38). After receipt of the acknowledgement 86, the server transmits an additional datagram message 88, which includes the packets that were missed by the client (col. 12, ln. 51-56). Sherman is absolutely silent of the subject of retransmitting a frame that was successfully received. Sherman is also silent on the subject of using a retransmitted message for the purpose of synchronization in general, or specifically for the purpose of timing a service interval period.

The obviousness rejection appears to be based upon the assumption that the combination of the admitted prior art and Sherman discloses all the limitations of the base claims 1, 9, 18, and 27. The Applicant's base claims recite a process that retransmits a frame after receiving an acknowledgement that the frame was received. This retransmission begins the timing of a minimum service interval, which is known by both parties, and which permits a power-save interval to be established. Neither the admitted prior art nor Sherman discloses the retransmission of an acknowledged frame, the establishment of minimum service interval, or the timing of a service interval based upon the retransmission of an acknowledged frame. With respect to the third *prima facie* requirement, even if it would have been obvious incorporate Sherman's system of retransmitting missed data into IEEE 802.11 protocols, that combination still fails to disclose the above-mentioned synchronization limitations recited in the Applicant's base claims. Claim 17, dependent from claim 9, claim 26, dependent from claim 18, and claim 36, dependent from claim 27, enjoy the same distinctions.

With respect to the first *prima facie* requirement, the Office Action states that it would have been obvious to incorporate the retransmission of missed data (Sherman) into the admitted prior art "...to assure all information is transmitted from source to destination. However, even if this assertion was correct, it does not explain how a practitioner in the art could have modified admitted prior art to use the retransmission of an acknowledged frame as the trigger for timing a service interval. The test is not whether there is a motivation to combine prior art references, but rather, does the combination of references suggest a modification that makes the claimed invention obvious. This

analysis is especially relevant if the combination of prior art references does not explicitly disclose every limitation of the claimed invention, as is evident in this case. As noted above in response to the third *prima facie* requirement, even when combined, the references do not disclose all the limitations of claims 1, 9, 18, and 27. Nothing in the Office Action, or in the references themselves explains how a person of skill would be motivated to modify features in the cited references that make the Applicant's claim limitations obvious. Rather, to meet the first *prima facie* requirement, there must be an explicit teaching that shows an expert how the admitted prior art can be modified in such a way as to make obvious the Applicant's use of a retransmitted frame for the purpose of synchronization. Such a *prima facie* case has not been made, simply because all the Applicant's claim limitations cannot be found in both the cited references.

Alternately, if the Examiner is relying upon the knowledge of a person with skill in the art to supply motivation lacking the admitted prior art and Sherman references, then additional evidence should have been provided. Notable, when the source or motivation is not from the prior art references, "the evidence" of motive will likely consist of an explanation or a well-known principle or problem-solving strategy to be applied". *DyStar*, 464 F.3d at 1366, 80 USPQ2d at 1649. The Examiner has not supplied the source for inspiration that an expert could use to modify admitted prior art into system that retransmits an acknowledged frame for the purpose of timing a service interval.

Considered from the perspective of the second *prima facie* requirement, even if an expert were given the admitted prior art and Sherman references as a foundation, no evidence has been provided to

show that there is a reasonable expectation of success in the claimed invention.

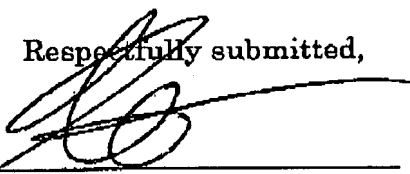
In summary, the Applicant respectfully submits that a *prima facie* case of obvious has not been supported in the rejection of claims 1, 9, 17-18, 26-27, and 36, and requests that the rejection be removed.

Applicant has reviewed the references made of record and asserts that the claims are patentable over the references made of record. It is believed that the application is in condition for allowance and reconsideration is earnestly solicited.

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Respectfully submitted,



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